

THE CAPACITY IN THE CIVIL LAW

The diploma thesis focuses on the legal capability in the civil law of the Czech Republic. The subject matter is broad. It includes the legal capability of natural and juridical persons. In both cases we can distinguish capacity to have rights and duties, capacity to act and capacity to be liable.

Human being is a fundamental base of the legal order. There is no doubt that everyone shall have the right to recognition everywhere as a person before the law. Juridical personality of a man is unlimited and inalienable right. These rules have origin not only in the Czech Civil Code, but also in the constitutional Charter of Fundamental Rights and Freedoms of the Czech Republic and international declarations and covenants, including The Universal Declaration of Human Rights and The International Covenant on Civil and Political Rights.

Only mentally competent persons of legal age have the full legal capacity. The qualification to enter into a legal relation of minors according to law and long-time mentally ill people on the basis of judgment can be restricted. What is more, nowadays the District Court is allowed to deprive permanent disordered man of his or her legal capacity. Under the bill of new Czech Civil Code and in accordance with the Convention on the Rights of Persons with Disabilities this procedure will not be possible. By convention the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Among others so called supported decision making shall substitute it.

Delictual capacity of a person depends on ability to identify and control his or her behaviour. The capacities to be liable and to act have common ground in part.

Legal capability of artificial legal person was derived from the one of human being. However, legal entities and their legal capacity is not the same as the legal capability of men. While capacity to have rights and duties of human beings is the natural right, in case of juristic person it depends on the intent of the legislator. There are two alternatives of legal regulation of the capacity to act. General legal competence is more frequent. Ultra vires doctrine was the historical legislation.